

ENTERED

January 19, 2024

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

THOMAS EARL SMITH,
TDCJ #02433337,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 2455 2456 2457 2458 2459 2460 2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481 2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 2679 2680 2681 2682 2683 2684 2685 2686 2687 2688 2689 2690 2691 2692 2693 2694 2695 2696 2697 2698 2699 2700 2701 2702 2703 2704 2705 2706 2707 2708 2709 2710 2711 2712 2713 2714 2715 2716 2717 2718 2719 2720 2721 2722 2723 2724 2725 2726 2727 2728 2729 2730 2731 2732 2733 2734 2735 2736 2737 2738 2739 2740 2741 2742 2743 2744 2745 2746 2747 2748 2749 2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765 2766 2767 2768 2769 2770 2771 2772 2773 2774 2775 2776 2777 2778 2779 2780 2781 2782 2783 2784 2785 2786 2787 2788 2789 2790 2791 2792 2793 2794 2795 2796 2797 2798 2799 2800 2801 2802 2803 2804 2805 2806 2807 2808 2809 2810 2811 2812 2813 2814 2815 2816 2817 2

CIVIL ACTION NO. H-23-3024

MEMORANDUM OPINION AND ORDER

Petitioner Thomas Earl Smith, (TDCJ #02433337), filed a document entitled “Writ of Mandamus” in the United States District Court for the Eastern District of Texas. (Dkt. 1). In this “writ,” Smith asked the Court to order that he be transferred to the custody of the Bureau of Prisons to serve his federal sentence in federal prison rather than first serving his sentences for two state-court convictions in state prison. (*Id.* at 1-2). The Eastern District construed Smith’s “writ” as a petition for writ of habeas corpus under 28 U.S.C. § 2241 and transferred it to the Southern District of Texas, where Smith is currently incarcerated. (Dkts. 3, 4). At the Court’s request, Smith filed an amended petition that clarified his claims. (Dkt. 9). The Court ordered the Government to answer the amended petition, (Dkt. 10), and the

Government responded with a motion for summary judgment. (Dkt. 14). Smith has not filed a response to the motion, and his time to do so has now expired. Having reviewed the “writ” and amended petition, the motion, all matters of record, and the law, the Court grants summary judgment in favor of the Government and dismisses Smith’s petition for the reasons explained below.

I. BACKGROUND

Smith was arrested on a federal warrant during a May 1, 2022, traffic stop in Polk County, Texas. (Dkt. 1, pp. 1-2). At the time, Smith was also the subject of a state warrant out of San Augustine County, but the County declined to execute on the warrant at that time. (*Id.* at 2). Smith was transported to the Liberty County jail, where he was held solely on the federal warrant. (*Id.*). On July 14, 2022, Smith pleaded guilty to federal charges of possession of a firearm by a prohibited person and possession with intent to distribute a controlled substance, which offenses occurred in March 2019 and December 2019. *See United States v. Smith*, No. 9:22-cr-00018 (E.D. Tex. Nov. 22, 2022), at Dkt. 18.

When Smith reviewed his presentence investigation report in anticipation of his federal sentencing, he discovered that it showed that he was subject to two state-law detainers—one for a 2021 charge of possession of controlled substances with intent to deliver in San Augustine County, and one for a 2020 burglary charge in Angelina County. (Dkt. 1, p. 3). *See also* Inmate Search,

www.inmate.tdcj.texas.gov/InmateSearch (last visited Jan. 17, 2024). When Smith asked his attorney about the pending detainers, his attorney told him that they were “babysitting warrants” that would likely be dismissed once Smith was sentenced on the federal charges. (Dkt. 1, p. 3).

On November 21, 2022, the federal court sentenced Smith to a total of 84 months in prison on his federal charges. (*Id.*). Smith’s plea agreement makes no reference to the pending state charges. *See Smith*, No. 9:22-cr-00018, at Dkt. 19. His federal judgment states that it “shall run concurrently to the defendant’s imprisonment under any future state or federal sentence related to the instant offense; and consecutively to the defendant’s imprisonment under any future state or federal sentence not related to the instant offense.” *Id.* at Dkt. 33. Despite the absence of any language regarding his pending state charges in the judgment, Smith alleges that he was “under the understanding from counsel” that he would serve his federal sentence first, before serving any state sentences. (Dkt. 1, p. 3).

Smith alleges that on December 1, 2022, he was transported to San Augustine County for proceedings on his pending state charges in that county. (*Id.*). In January 2023, Smith was transferred to Angelina County to address the state charges pending there. (*Id.* at 4). Smith ultimately pleaded guilty to both state charges, and he was sentenced in late January 2023 to five years in prison on each conviction, with the sentences to run concurrently with each other. (*Id.*). Smith alleges that his state plea

agreement included a provision that his state sentences would run concurrently with his federal sentence, but no copy of that plea agreement is in the record. (*Id.*).

Smith alleges that after he resolved his state charges, he asked the Angelina County transportation supervisor to arrange for his transport back to federal custody so that he could begin serving his federal sentence in a federal prison. (*Id.*). Smith alleges that the transportation supervisor told him that the U.S. Marshals had instructed her to transfer Smith to TDCJ custody to serve his state sentences first. (*Id.*). Smith alleges that this instruction was incorrect because he resolved his federal charges first and so should be required to serve his federal sentence in federal prison first. (*Id.*). When Smith was unable to resolve the issue with TDCJ, he filed this petition.

As relief, Smith asks the Court to order the Bureau of Prisons to take custody of him and transfer him to a federal prison so that he can serve his federal sentence first. (*Id.*). He also requests that the Court order his state and federal sentences to run concurrently and order that he be given credit against his federal sentence for all of his time spent in TDCJ custody. (*Id.*).

The Government responded to Smith's petition with a motion for summary judgment. (Dkt. 14). In that motion, the Government asserts that Smith's petition should be denied because he has no standing to challenge the order in which his state and federal sentences are being served. (*Id.* at 2). Despite being given the

opportunity, Smith has not responded to the Government's motion.

II. DISCUSSION

Smith raises three separate but related claims: first, because he was sentenced in federal court before he was sentenced in state court, he should serve his federal sentence in federal prison before serving his state sentences; second, his state and federal sentences should be served concurrently; and third, he should be awarded credit against his federal sentence for the time served on his state sentences. The law does not support any of these arguments.

A. Order of Sentences

Smith's primary contention is that he should serve his federal sentence first because he was convicted and sentenced in federal court before he was convicted and sentenced in state court. But the order in which federal and state sentences are imposed is not dispositive of how they will be served. Instead, "the federal government and a state are perfectly free to make any agreement between themselves concerning which of their sentences will be served first, as long as the prisoner is not compelled unnecessarily to serve his sentences in a piecemeal fashion." *Yusufu v. U.S. Bureau of Prisons*, 129 F.3d 608, 1997 WL 681027, at *1 (5th Cir. 1997) (per curiam) (quoting *Causey v. Civiletti*, 621 F.2d 691, 694 (5th Cir. 1980)). Accordingly, "[a] person who has violated the criminal statutes of both the Federal and State Governments may not complain of the order in which he is tried or

punished for such offenses.” *Disiere v. Dretke*, No. Civ. A. 504CV086-C, 2004 WL 962831, at *2 (N.D. Tex. Apr. 27, 2004) (quoting *Causey*, 621 F.2d at 694), *aff’d*, 115 F. App’x 210 (5th Cir. 2004); *see also United States v. Basaldua*, No. 07-60037, 2015 WL 13723776, at *6-7 (W.D. La. Feb. 17, 2015) (specifically rejecting a prisoner’s argument that he should be permitted to serve his federal sentence before his state sentences because he was sentenced first in federal court).

In this case, while the federal government may have had the power to require that Smith serve his federal sentence first, it was not required to exercise that power in that manner, and it elected not to do so. *See Causey*, 621 F.2d at 693. Smith cannot challenge the federal government’s decision on how to exercise its authority. He is not entitled to an order requiring his transfer to the Bureau of Prisons, and his claim for this relief is denied.

B. Concurrent Sentences

Smith also contends that he entitled to credit against his federal sentence for the time he is serving in state prison because his state and federal sentences were ordered to run concurrently. The record does not support this argument.

“[F]ederal law presumes that when multiple terms of imprisonment are imposed at different times, they will run consecutively *unless* the district court specifically orders that they run concurrently.” *Free v. Miles*, 333 F.3d 550, 553 (5th Cir. 2003) (per curiam) (citing 18 U.S.C. § 3584(a)). The district court in

Smith's case ordered that any state sentences "relating to" his federal sentences would run concurrently with his federal sentence but that unrelated state sentences would run consecutively. Smith's federal offenses occurred in March 2019 and December 2019, *see Smith*, No. 9:22-cr-00018, at Dkt. 1, while his state offenses occurred in July 2020 and October 2021. *See* Inmate Search, www.inmate.tdcj.texas.gov/InmateSearch (last visited Jan. 17, 2024). Nothing in the record shows that Smith's state convictions are "related to" his federal convictions. Therefore, in the absence of evidence to the contrary, Smith's state and federal sentences are presumed to run consecutively to each other—not concurrently.

In support of his argument, Smith asserts that his state plea agreement provides that his state sentences will run concurrently with his federal sentence. Even if this is true, it does not entitle Smith to relief because a state sentencing judge has no authority to dictate how a federal sentence will be structured. *See Leal v. Tombone*, 341 F.3d 427, 428-29 (5th Cir. 2003) (per curiam) (citing *Del Guzzi v. United States*, 980 F.2d 1269, 1270 (9th Cir. 1992) (per curiam)); *Basaldua*, 2015 WL 13723776, at *7 ("The state judge's subsequent order that the state sentence run concurrently is not binding on the Federal Bureau of Prisons.").

Smith has not shown that his state and federal convictions are related so as to bring them within the provision of his federal judgment regarding concurrent time.

He is therefore not entitled to an order requiring his state and federal sentences to be served concurrently.

C. Credit Against Federal Sentence

Finally, Smith contends that because his sentences were ordered to run concurrently, he should be entitled to credit against his federal sentence for his time served in state prison. Even assuming that Smith could so show he was entitled to concurrent sentences, he would not be entitled to such an order from this Court.

Federal law permits a prisoner to be “given credit toward his term of federal imprisonment for any time he spent in official detention prior to the commencement of his sentence ‘that has not been credited against another sentence.’” *Leal*, 341 F.3d at 428 (quoting 18 U.S.C. § 3585(b)). Generally, this means that “a prisoner cannot receive credit for time that was already credited toward a state sentence.” *Smith v. McConnell*, 950 F.3d 285, 288 (5th Cir. 2020) (per curiam) (citing *United States v. Wilson*, 503 U.S. 329, 333-37 (1992)).

However, it is not up to this Court to determine whether Smith is entitled to such credit. Instead, “the Attorney General, through the Bureau of Prisons, determines what credit, if any, will be awarded to prisoners for time spent in custody prior to the commencement of their federal sentences.” *Leal*, 341 F.3d at 428. Therefore, when Smith’s state sentences are completed, he will be taken into federal custody, at which time the Bureau of Prisons will determine what credit (if any) he

is entitled to for his time spent in state custody. *See Wilson*, 503 U.S. at 331-35.

This Court has no authority to order the Bureau of Prisons to credit Smith with the time spent serving his state sentences against his federal sentence, and his petition seeking this relief is denied.

III. CONCLUSION

Based on the foregoing, the Court **ORDERS** as follows:

1. The Government's motion for summary judgment, (Dkt. 14), is **GRANTED**.
2. Smith's petition for writ of habeas corpus under 28 U.S.C. § 2241 is **DISMISSED** with prejudice.
3. Any pending motions are denied as moot.
4. Final judgment will be separately entered.
5. No Certificate of Appealability will be issued. *See Pack v. Yusuff*, 218 F.3d 448, 451 n.3 (5th Cir. 2000) ("A COA is not required to appeal the denial of a § 2241 petition.").

The Clerk shall provide a copy of this Order to the parties.

SIGNED at Houston, Texas, on Jan 19, 2024.



DAVID HITTNER
UNITED STATES DISTRICT JUDGE